

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**

NOTICE OF PROPOSED RULEMAKING

Workers' Compensation – Medical Treatment Utilization Schedule

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in her by Labor Code sections 59, 133, 4603.5, and 5307.3, proposes to adopt and amend regulations contained in Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations, sections 9792.20 through 9792.26, relating to the medical treatment utilization schedule (MTUS).

PROPOSED REGULATORY ACTION

The Division of Workers' Compensation, proposes to amend Article 5.5.2 of Chapter 4.5, Subchapter 1, Division 1, of Title 8, California Code of Regulations, commencing with Section 9792.20:

Amended Section 9792.20	Medical Treatment Utilization Schedule—Definitions
Amended Section 9792.21	Medical Treatment Utilization Schedule
Adopted Section 9792.22	General Approaches
Adopted Section 9792.23	Clinical Topics
Adopted Section 9792.23.1	Neck and Upper Back Complaints
Adopted Section 9792.23.2	Shoulder Complaints
Adopted Section 9792.23.3	Elbow Complaints
Adopted Section 9792.23.4	Forearm, Wrist, and Hand Complaints
Adopted Section 9792.23.5	Low Back Complaints
Adopted Section 9792.23.6	Knee Complaints
Adopted Section 9792.23.7	Ankle and Foot Complaints
Adopted Section 9792.23.8	Stress Related Conditions
Adopted Section 9792.23.9	Eye
Adopted Section 9792.24	Special Topics
Amended Section 9792.24.1	Acupuncture Medical Treatment Guidelines
Adopted Section 9792.24.2	Chronic Pain Medical Treatment Guidelines (DWC 2008)
Adopted Section 9792.24.3	Postsurgical Treatment Guidelines (DWC 2008)
Amended Section 9792.25	Presumption of Correctness, Burden of Proof and Hierarchy of Scientific Based Evidence
Amended Section 9792.26	Medical Evidence Evaluation Advisory Committee

TIME AND PLACE OF PUBLIC HEARING

A public hearing has been scheduled to permit all interested persons the opportunity to present statements or arguments, either orally or in writing, with respect to the subjects noted above. The hearing will be held at the following time and place:

Date: August 12, 2008
Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business
Place: Elihu Harris State Office Building – Auditorium
1515 Clay Street
Oakland, California 94612

Date: August 11, 2008
Time: 10:00 A.M. to 5:00 P.M., or until conclusion of business
Place: Ronald Reagan State Building – Auditorium
300 South Spring Street
Los Angeles, California 90013

The state office buildings and their auditoriums are accessible to persons with mobility impairments. Alternate formats, assistive listening systems, sign language interpreters, or other type of reasonable accommodation to facilitate effective communication for persons with disabilities, are available upon request. Please contact the State Wide Disability Accommodation Coordinator, Kathleen Estrada, at 1-866-681-1459 (toll free), or through the California Relay Service by dialing 711 or 1-800-735-2929 (TTY/English) or 1-800-855-3000 (TTY/Spanish) as soon as possible to request assistance.

Please note that public comment will begin promptly at 10:00 a.m. and will conclude when the last speaker has finished his or her presentation or 5:00 p.m., whichever is earlier. If public comment concludes before the noon recess, no afternoon session will be held.

The Administrative Director requests, but does not require, that any persons who make oral comments at the hearing also provide a written copy of their comments. Equal weight will be accorded to oral comments and written materials.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Industrial Relations, Division of Workers' Compensation. The written comment period closes at **5:00 P.M., on August 12, 2008**. The Division of Workers' Compensation will consider only comments received at the Division by that time. Equal weight will be accorded to comments presented at the hearing and to other written comments received by 5 P.M. on that date by the Division.

Submit written comments concerning the proposed regulations prior to the close of the public comment period to:

Maureen Gray
Regulations Coordinator
Division of Workers' Compensation, Legal Unit
P.O. Box 420603
San Francisco, CA 94142

Written comments may be submitted by facsimile transmission (FAX), addressed to the above-named contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail) using the following e-mail address: dwcrules@dir.ca.gov.

Unless submitted prior to or at the public hearing, Ms. Gray must receive all written comments no later than **5:00 P.M., on August 12, 2008**.

AUTHORITY AND REFERENCE

The Administrative Director is undertaking this regulatory action pursuant to the authority vested in her by Labor Code sections 59, 133, 5307.3, and 5307.27.

Reference is to Labor Code sections 77.5, 4600, 4604.5, and 5307.27, Labor Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Labor Code section 5307.27 requires the Administrative Director to adopt a Medical Treatment Utilization Schedule (MTUS) that is “scientific and evidence-based, peer-reviewed, and nationally recognized.” (See, also Lab. Code, § 4604.5(b).) The statute further provides that the MTUS shall address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers’ compensation cases. The Administrative Director conducted formal rulemaking and the MTUS was adopted effective June 15, 2007.

Labor Code section 4600(a) requires an employer to provide medical treatment to the injured worker that is reasonably required to cure or relieve the effects of the industrial injury. Labor Code section 4600(b) provides that the medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the MTUS adopted by the Administrative Director pursuant to Labor Code section 5307.27.

Labor Code section 4604.5(a) provides that the MTUS is presumed to be correct on the issue of the extent and scope of medical treatment. The presumption is rebuttable and may be controverted by a preponderance of scientific medical evidence establishing that a variance from the guidelines is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The presumption created is one affecting the burden of proof. Labor Code section 4604.5(e) provides that treatment for injuries not covered by the MTUS shall be authorized in accordance with other evidence-based medical treatment guidelines generally recognized by the national medical community and that are scientifically based.

Labor Code section 4604.5(b) provides that the MTUS is designed to assist providers by offering an analytical framework for the evaluation and treatment of injured workers, and constitutes care in accordance with Labor Code section 4600 for all injured workers diagnosed with industrial conditions.

Labor Code section 4604.5(d)(1) provides that for injuries occurring on and after January 1, 2004, an injured worker shall be entitled to no more than 24 chiropractic, 24 occupational therapy, and 24 physical therapy visits per industrial injury. Labor Code section 4604.5(d)(3), as adopted by Assembly Bill 1073 (Statute 2007, Chapter 621), provides that the 24-visit limitation does “not apply to visits for postsurgical physical medicine and postsurgical rehabilitation services provided in compliance with a postsurgical treatment utilization schedule established by the administrative director pursuant to Section 5307.27.”

The Administrative Director has adopted into the MTUS the American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines, 2nd Edition, 2004 (ACOEM Practice Guidelines), and the Acupuncture Medical Treatment Guidelines. California Code of Regulations, title 8, section 9792.23 (now as amended Section 9792.26) provides the Medical Evidence Evaluation Advisory Committee (MEEAC) will provide recommendations to the Medical Director on matters concerning the MTUS.

The proposed regulations implement, interpret, and make specific Labor Code sections 77.5, 4604.5, and 5307.27, and Labor Code section 4604.5(d)(3), as adopted by Assembly Bill 1073 (Statute 2007, Chapter 621), as follows:

1. Section 9792.20—Medical Treatment Utilization Schedule—Definitions

This section, as contained in the MTUS regulations effective June 15, 2007, defines key terms used in the regulations to ensure that the meaning will be clear to the public.

Section 9792.20(a) sets forth the definition for the term “American College of Occupational and Environmental Medicine (ACOEM).” The definition was not changed.

Section 9792.20(b) defines the term “ACOEM Practice Guidelines.” The definition was not changed.

Section 9792.20(c) sets forth the definition of the term “chronic pain.” The term is defined as any pain that persists beyond the anticipated time of tissue healing.

Section 9792.20(d) sets forth the definition for the term “claims administrator.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(c) and is re-lettered section 9792.20(d).

Section 9792.20(e) sets forth the definition of the term “evidence-based.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(d) and is re-lettered section 9792.20(e).

Section 9792.20(f) sets forth the definition of the term “functional improvement.” The definition of the term is amended to substitute the word “quantifiable” for the phrase “clinically significant.” The word “Section” is corrected for clerical errors to substitute the higher case “S” at the beginning of the word with a lower case “s” and to make the word plural as opposed to singular. The term “functional improvement” as amended now means “either a quantifiable improvement in activities of daily living or a reduction in work restrictions as measured during the history and physical exam, performed and documented as part of the evaluation and management visit billed under the Official Medical Fee Schedule (OMFS) pursuant to sections 9789.10-9789.111; and a reduction in the dependency on continued medical treatment.” The definition was formerly contained in section 9792.20(e) and is re-lettered section 9792.20(f).

Section 9792.20(g) sets forth the definition for the term “medical treatment.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(f) and is re-lettered section 9792.20(g).

Section 9792.20(h) sets forth the definition for the term “medical treatment guidelines.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(g) and is re-lettered section 9792.20(h).

Section 9792.20(i) sets forth the definition for the term “MEDLINE.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(h) and is re-lettered section 9792.20(i).

Section 9792.20(j) sets forth the definition for the term of “nationally recognized.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(i) and is re-lettered section 9792.20(j).

Section 9792.20(k) sets forth the definition of the term “peer reviewed.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(j) and is re-lettered section 9792.20(k).

Section 9792.20(l) sets forth the definition of the term “scientifically based.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(k) and is re-lettered section 9792.20(l).

Section 9792.20(m) sets forth the definition of the term “strength of evidence.” The substance of the definition was not changed. The definition was formerly contained in section 9792.20(l) and is re-lettered section 9792.20(m).

2. Section 9792.21—Medical Treatment Utilization Schedule

This section sets forth the medical treatment utilization schedule.

Section 9792.21(a) This section, which informs the public that the Administrative Director adopts and incorporates the Medical Treatment Utilization Schedule, is amended to insert the acronym “MTUS” immediately following the phrase “Medical Treatment Utilization Schedule.” The acronym will be used subsequently throughout the regulations when referring to the medical treatment utilization schedule. The section is further amended to reflect that the MTUS now consists of Sections 9792.20 through Section 9792.26. The higher case “S” in the sentence in the word “Section” is corrected for clerical error to lower case “s.” Also, the first “section” word in the sentence is corrected for clerical error from plural to singular. Moreover, the section is amended to delete the phrase “The Administrative Director adopts and incorporates by reference the following medical treatment guidelines into the medical treatment Schedule.” The deletion of this phrase is for reorganization purposes. The reorganization of the MTUS is intended to make it more user-friendly and to allow the DWC to adopt and/or update portions of the MTUS through formal rulemaking without affecting other parts of the MTUS.

Section 9792.21(a)(1) This section is moved to section 9792.22(a) and is amended. The amendments will be discussed under the caption of that section in this notice.

Section 9792.21(a)(2) This section is moved to section 9792.24.1 and is amended. The amendments will be discussed under the caption of that section in this notice.

Section 9792.21(b) The substance of this section is not changed. This section is amended for nonsubstantive purposes to substitute the phrase “medical treatment utilization schedule” with the acronym “MTUS.”

Section 9792.21(c) The substance of this section is not changed. This section is amended for nonsubstantive purposes to substitute the phrase “Medical Treatment Utilization Schedule” with the acronym “MTUS” and to reflect the reference to section 9792.22 is now section 9792.25. Further, the higher case “S” in the word “Section” which appears in the sentence twice is corrected for clerical error to lower case “s.”

3. Section 9792.22—General Approaches

Section 9792.22 originally contained the subsections pertaining to the “Presumption of Correctness, Burden of Proof and Hierarchy of Scientific Based Evidence.” These subsections have been moved to section 9792.25 and were amended. The amendments will be discussed under the caption of that section.

Section 9792.22(a)(1)-(a)(4) A part of these sections was originally contained in section 9792.21(a)(1), which incorporated by reference the American College of Occupational and Environmental Medicine’s Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines), Second Edition, 2004, into the MTUS. The incorporation of the ACOEM Practice Guidelines into the MTUS has not been changed from the MTUS regulations effective June 15, 2007. However, these regulations propose to reorganize the MTUS. The reorganization incorporates the ACOEM Practice Guidelines on a guideline by guideline basis (e.g., chapter by chapter basis) and to treats every separate chapter adopted as a separate guideline. Section 9792.22(a)(1)-(a)(4) adopts and incorporates the ACOEM Practices Guidelines related to general approaches. Former section 9792.21(a)(1) (now set forth in this section) is amended to state that the Administrative Director adopts and incorporates by reference into the MTUS specific guidelines set forth below from the ACOEM Practice Guidelines. The guidelines listed as adopted are (1) Prevention (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 1); (2)

General Approach to Initial Assessment and Documentation (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 2); (3) Initial Approaches to Treatment (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 3); and (4) Cornerstones of Disability Prevention and Management (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 5).

The reference to ACOEM Practice Guidelines edition (Second Edition, 2004) is deleted. The reason for deleting the reference to the second edition is that the reference will be placed next to the guideline (chapter) being adopted. As the MTUS is updated the separate guidelines will reflect different edition dates as they are revised. The statement in the section which informs the public where a copy of the ACOEM Practice Guidelines may be obtained has not been changed. Thus, the section as amended now states:

§ 9792.22. General Approaches

(a) The Administrative Director adopts and incorporates by reference into the MTUS specific guidelines set forth below from the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines (ACOEM Practice Guidelines) for the following chapters. A copy may be obtained from the American College of Occupational and Environmental Medicine, 25 Northwest Point Blvd., Suite 700, Elk Grove Village, Illinois, 60007-1030 (www.acoem.org).

(1) Prevention (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 1).

(2) General Approach to Initial Assessment and Documentation (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 2).

(3) Initial Approaches to Treatment (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 3).

(4) Cornerstones of Disability Prevention and Management (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 5).

4. Section 9792.23—Clinical Topics

Section 9792.23 originally contained the subsections pertaining to the "Medical Evidence Evaluation Advisory Committee." These subsections have been moved to section 9792.26 and were amended. The amendments will be discussed under the caption of that section.

As previously indicated, these regulations propose to reorganize the MTUS. Another change in the MTUS regulations effective June 15, 2007 is to adopt clinical topic medical treatment guidelines into the MTUS.

Section 9792.23(a) This section introduces the clinical topics section series, and provides that the Administrative Director adopts and incorporates by reference into the MTUS specific clinical topic medical treatment guidelines in the series of sections commencing with 9792.23.1 et seq. The section provides that clinical topics apply to the initial management and subsequent treatment of presenting complaints specific to the body part.

Section 9792.23(b) provides that for all treatment not addressed in the MTUS, the authorized treatment and diagnostic services in the initial management and subsequent treatment for presenting complaints shall be in accordance with other scientifically and evidence-based medical treatment guidelines that are nationally recognized by the medical community pursuant

to section 9792.25(b). If the treatment is not addressed in the clinical topics section, the MTUS allows for the use of other guidelines that meet the requirement of the statute.

Section 9792.23(b)(1) provides for situations where the treatment is being provided using other guidelines which are not part of the MTUS and the patient has chronic pain. In these situations, and when there is no surgical option for the complaint, the chronic pain medical treatment guidelines in section 9792.24.2 apply. This section provides guidance in the use of other guidelines which are not part of the MTUS.

Section 9792.23(b)(2) provides for situations where the treatment is being provided using other guidelines which are not part of the MTUS and surgery is performed. Under these circumstances, and if the injured worker is in need of physical medicine postsurgically, the postsurgical treatment guidelines in section 9792.24.3 apply. This section provides guidance in the use of other guidelines which are not part of the MTUS.

4. Section 9792.23.1—Neck and Upper Back Complaints

Section 9792.23.1(a) provides the Administrative Director adopts and incorporates by reference the Neck and Upper Back Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 8) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.1(b) provides that in the course of treatment where acupuncture or acupuncture with electrical stimulation is being considered, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.1(c) provides that if recovery has not taken place with respect to pain by the end of algorithm 8-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.1(d) provides that if surgery is performed in the course of treatment for neck and upper back complaints and the injured worker is in need of physical medicine, the postsurgical treatment guidelines in section 9792.24.3 apply. It further states that when there are no surgical options for the neck and upper back complaint and the injured worker has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

5. Section 9792.23.2—Shoulder Complaints

Section 9792.23.2(a) provides the Administrative Director adopts and incorporates by reference the Shoulder Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 9) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.2(b) provides that if recovery has not taken place with respect to pain by the end of algorithm 9-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.2(c) provides that if surgery is performed in the course of treatment for shoulder complaints and the injured worker is in need physical medicine, the postsurgical treatment guidelines in section 9792.24.3 apply. The section additionally provides that when there are no surgical options for the shoulder complaint and the injured worker has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

6. Section 9792.23.3—Elbow Complaints

Section 9792.23.3(a) provides the Administrative Director adopts and incorporates by reference the Elbow Disorders Chapter (ACOEM Practice Guidelines, 2nd Edition (Revised 2007), Chapter 10) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.3(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered for elbow complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.3(c) provides that if recovery has not taken place with respect to pain by the end of algorithm 10-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.3(d) provides that if surgery is performed in the course of treatment for elbow complaints, the postsurgical treatment guidelines in section 9792.24.3 apply. The section additionally provides when there are no surgical options for the elbow complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

7. Section 9792.23.4—Forearm, Wrist, and Hand Complaints

Section 9792.23.4(a) provides the Administrative Director adopts and incorporates by reference the Forearm, Wrist, and Hand Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 11) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.4(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered for forearm, wrist, and hand complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.4(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 11-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.4(d) provides that if surgery is performed in the course of treatment for forearm, wrist, and hand complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the forearm, wrist, and hand complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

8. Section 9792.23.5—Low Back Complaints

Section 9792.23.5(a) provides the Administrative Director adopts and incorporates by reference the Low Back Complaints (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 12) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.5(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered to treat low back complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.5(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 12-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.5(d) provides that if surgery is performed in the course of treatment for low back complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the low back complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

9. Section 9792.23.6—Knee Complaints

Section 9792.23.6(a) provides the Administrative Director adopts and incorporates by reference the Knee Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 13) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.6(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered to treat knee complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.6(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 13-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.6(d) provides that if surgery is performed in the course of treatment for knee complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the knee complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

10. Section 9792.23.7—Ankle and Foot Complaints

Section 9792.23.7(a) provides the Administrative Director adopts and incorporates by reference the Ankle and Foot Complaints Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 14) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.7(b) provides that where acupuncture or acupuncture with electrical stimulation is being considered to treat ankle and foot complaints, the acupuncture medical treatment guidelines in section 9792.24.1 apply.

Section 9792.23.7(c) provides that when recovery has not taken place with respect to pain by the end of algorithm 14-5, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

Section 9792.23.7(d) provides that if surgery is performed in the course of treatment for ankle and foot complaints, the postsurgical treatment guidelines in section 9792.24.3 for postsurgical physical medicine apply. It additionally provides that when there are no surgical options for the ankle and foot complaint and the patient has chronic pain, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

11. Section 9792.23.8—Stress Related Conditions

Section 9792.23.7(a) provides the Administrative Director adopts and incorporates by reference the Stress Related Conditions Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 15) by reference into the MTUS from the ACOEM Practice Guidelines.

12. Section 9792.23.9—Eye

Section 9792.23.9(a) provides the Administrative Director adopts and incorporates by reference the Eye Chapter (ACOEM Practice Guidelines, 2nd Edition (2004), Chapter 16) into the MTUS from the ACOEM Practice Guidelines.

Section 9792.23.9(b) provides that when recovery has not taken place with respect to pain by the end of algorithm 16-6, the chronic pain medical treatment guidelines in section 9792.24.2 apply.

13. Section 9792.24—Special Topics

As previously indicated, these regulations propose to reorganize the MTUS. Another change in the MTUS is to adopt special topics medical treatment guidelines into the MTUS.

Section 9792.24(a) provides special topics refer to clinical topic areas where the Administrative Director has determined that the clinical topic sections of the MTUS require further supplementation.

14. Section 9792.24.1—Acupuncture Medical Treatment Guidelines

Section 9792.24.1 setting forth the Acupuncture Medical Treatment Guidelines was contained in section 9792.21(a)(2) of the MTUS regulations. As part of the proposed reorganization, this section is moved to Section 9792.24.1 under the special topics section and is amended as follows.

The name of the guideline “Acupuncture Medical Treatment Guidelines is given its own section number, and the “number (2)” immediately preceding the title of the guideline is deleted. Further, the text immediately following the title, stating: “The Acupuncture Medical Treatment Guidelines set forth in this subdivision shall supersede the text in the ACOEM Practice Guidelines, Second Edition, relating to acupuncture, except for shoulder complaints, and shall address acupuncture treatment where not discussed in the ACOEM Practice Guidelines,” is deleted. This deletion of this sentence is consistent with the proposed reorganization of the MTUS to adopt the specific clinical topics contained in the ACOEM Practice Guidelines on a guideline by guideline basis (e.g., chapter by chapter basis), and to list the acupuncture medical treatment guidelines separately under the special topics section of the MTUS.

Section 9792.24.1(a) is amended to change the letter case from higher case “A” to lower case “a” and to grammatically correct the introduction of the definitions in the section. Thus, the section now states: “As used in this section, the following definitions apply.”

Section 9792.24.1(a)(1) sets forth the definition of the term “acupuncture.” The substance of the definition was not changed. The definition was formerly contained in section 9792.21(a)(2)(A)(i) and is re-numbered section 9792.24.1(a)(1).

Section 9792.24.1(a)(2) sets forth the definition of the term “Acupuncture with electrical stimulation.” The substance of the definition was not changed. The definition was formerly contained in section 9792.21(a)(2)(A)(ii) and is re-numbered section 9792.24.1(a)(2).

Section 9792.24.1(a)(3) sets forth the definition of the term “Chronic pain for purposes of acupuncture.” The definition is revised to state that “chronic pain for purposes of acupuncture” means chronic pain as defined in section 9792.20(c). Section 9792.20(c) defines chronic pain as “any pain that persists beyond the anticipated time of tissue healing.” The definition was formerly contained in section 9792.21(a)(2)(A)(iii) and is re-numbered section 9792.24.1(a)(3).

Former section 9792.21(a)(2)(B) and subdivisions (i)-(vii) have been deleted for reorganization purposes. The section and subdivisions were deleted because they referred to the ACOEM Practice Guidelines chapters which have been incorporated on a guideline by guideline basis (chapter by chapter basis); the section and subdivisions are no longer necessary.

Section 9792.24.1(b)(1) provides that these guidelines apply to acupuncture or acupuncture with electrical stimulation when indicated in the clinical topic medical treatment guidelines in the series of sections commencing with section 9792.23.1 et seq., or in the chronic pain medical treatment guidelines (DWC 2008) contained in section 9792.24.2. This section reflects the reorganization of the MTUS. It clarifies that the physician is now able to look at the clinical topics and chronic pain medical treatment sections for the indications for acupuncture or acupuncture with electrical stimulation.

Section 9792.24.1(c) sets forth the frequency and duration of acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C) and is re-numbered section 9792.24.1(c).

Section 9792.24.1(c)(1) sets forth the time to produce functional improvement when providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C)(i) and is re-numbered section 9792.24.1(c)(1).

Section 9792.24.1(c)(2) sets forth the frequency when providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C)(ii) and is re-numbered section 9792.24.1(c)(2).

Section 9792.24.1(c)(3) sets forth the optimum when providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(C)(iii) and is re-numbered section 9792.24.1(c)(3).

Section 9792.24.1(d) sets forth when treatment may be extended in providing acupuncture or acupuncture with electrical stimulation. The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(D) and is re-numbered section 9792.24.1(d). The section is also corrected to properly reference the definition of functional improvement which is now contained in section 9792.20(f).

Section 9792.24.1(e) The substance of the section was not changed. The section was formerly contained in section 9792.21(a)(2)(E) and has been re-numbered section 9792.24.1(e).

15. Section 9792.24.2—Chronic Pain Medical Treatment Guidelines (DWC 2008)

Section 9792.24.2(a) provides that the Chronic Pain Medical Treatment Guidelines (DWC 2008), consisting of two parts, are adopted and incorporated by reference into the MTUS. It indicates that Part 1 is entitled Introduction, and Part 2 is entitled Pain Interventions and Treatments. This section further provides that the guidelines replace Chapter 6 of the ACOEM Practice Guidelines, 2nd Edition (2004). It clarifies that where the clinical topic sections of the MTUS in the series of sections commencing with section 9792.23.1 et seq., makes reference to Chapter 6 or when there is a reference to the “pain chapter,” or “pain assessment,” the chronic pain medical treatment guidelines will apply instead of Chapter 6. It further informs the public that a copy of these guidelines and citations listed in the guidelines may be obtained from the Medical Unit, Division of Workers’ Compensation, P.O. Box 71010, Oakland, CA 94612, or from the DWC web site at <http://www.dwc.ca.gov>.

Section 9792.24.2(b) provides that the chronic pain medical treatment guidelines apply when the patient has chronic pain as determined by following the clinical topics in the MTUS.

Section 9792.24.2(c) provides that when a patient is diagnosed with chronic pain and the treatment for the condition is covered in the clinical topics sections but is not addressed in the chronic pain medical treatment guidelines, the clinical topics section applies to that treatment.

Section 9792.24.2(d) provides that when the treatment is addressed in both the chronic pain medical treatment guidelines and the specific guideline found in the clinical topics section of the MTUS, the chronic pain medical treatment guideline will apply.

16. Section 9792.24.3—Postsurgical Treatment Guidelines (DWC 2008)

Section 9792.24.3(a) sets forth the definitions which will apply when using the postsurgical treatment guidelines.

Section 9792.24.3(a)(1) sets forth the definition for the term “general course of therapy.” The term is defined as the number of visits and/or time interval which is indicated for postsurgical treatment for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section.

Section 9792.24.3(a)(2) sets forth the definition for the term “initial course of therapy.” It defines the term as one half of the number of visits specified in the general course of therapy for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section.

Section 9792.24.3(a)(3) sets forth the definition for the term “postsurgical physical medicine period.” It defines the term as the time frame that is needed for postsurgical treatment and rehabilitation services beginning with the date of the procedure and ending at the time specified for the specific surgery in the postsurgical physical medicine treatment recommendations set forth in subdivision (d)(1) of this section. The definition also clarifies that for all surgeries not covered by these guidelines the postsurgical physical medicine period is six (6) months.

Section 9792.24.3(a)(4) sets forth the definition for the term “surgery.” It defines the term as a procedure listed in the surgery chapter of the Official Medical Fee Schedule with follow-up days of 90 days.

Section 9792.24.3(a)(5) sets forth the definition for the term “visit.” It defines the term to mean a date of service to provide postsurgical treatment billed using the physical medicine section of the Official Medical Fee Schedule.

Section 9792.24.3(b) provides for the application of the postsurgical treatment guidelines.

Section 9792.24.3(b)(1) provides that the postsurgical treatment guidelines apply to visits during the postsurgical physical medicine period only and to surgeries as defined in these guidelines. It further provides that at the conclusion of the postsurgical physical medicine period, treatment reverts back to the applicable 24-visit limitation for chiropractic, occupational and physical therapy pursuant to Labor Code section 4604.5(d)(1).

Section 9792.24.3(c) sets forth requirements for postsurgical patient management.

Section 9792.24.3(c)(1) provides that only the surgeon who performed the operation, a nurse practitioner, or physician assistant working with the surgeon, or a physician designated by that surgeon can make a determination of medical necessity and prescribe postsurgical treatment under this guideline. This section allows for prompt provision of postsurgical physical medicine.

Section 9792.24.3(c)(2) provides that the medical necessity for postsurgical physical medicine treatment for any given patient is dependent on, but not limited to, such factors as the comorbid medical conditions; prior pathology and/or surgery involving same body part; nature, number and complexities of surgical procedure(s) undertaken; presence of surgical complications; and the patient’s essential work functions. This section reminds physicians and claims administrators to take into consideration factors which might affect the postsurgical treatment.

Section 9792.24.3(c)(3) provides that if postsurgical physical medicine is medically necessary, an initial course of therapy may be prescribed. The section further provides that with documentation of functional improvement, a subsequent course of therapy shall be prescribed within the parameters of the general course of therapy applicable to the specific surgery. Additionally, the section provides that upon a determination that additional functional

improvement can be accomplished after completion of the general course of therapy, physical medicine treatment may be continued up to the end of the postsurgical physical medicine period. This section allows for initial, uninterrupted provision of postsurgical physical medicine and continuation of it upon documentation of functional improvement.

Section 9792.24.3(c)(4) provides that patients shall be reevaluated following continuation of therapy when necessary or no later than every forty-five days from the last evaluation to document functional improvement to continue physical medicine treatment. The section further provides that frequency of visits shall be gradually reduced or discontinued as the patient gains independence in management of symptoms and with achievement of functional goals. This section provides the timeline for reporting functional improvement to be consistent with the timeline for reporting by the primary treating physician.

Section 9792.24.3(c)(4)(A) provides that in the event the patient sustains an exacerbation related to the procedure performed after treatment has been discontinued and it is determined that more visits are medically necessary, physical medicine treatment shall be provided within the postsurgical physical medicine period. This section allows for the injured worker to start up the physical medicine again when previously discontinued if he or she sustains an exacerbation related to the procedure and it occurs within the physical medicine period.

Section 9792.24.3(c)(4)(B) provides that in cases where no functional improvement is demonstrated, postsurgical treatment shall be discontinued at any time during the postsurgical physical medicine period. There are times when patients do not show functional improvement. Under these circumstances, the postsurgical treatment can be discontinued even when the postsurgical physical medicine period has not ended.

Section 9792.24.3(c)(5) states that treatment is provided to patients to facilitate postsurgical functional improvement. The section establishes facilitation of postsurgical functional improvement as the goal of the treatment.

Section 9792.24.3(c)(5)(A) provides that the surgeon who performed the operation, a nurse practitioner or physician assistant working with the surgeon, or physician designated by that surgeon, the therapist, and the patient should establish quantifiable, functional goals achievable within a specified timeframe. This section allows the postsurgical team to establish treatment goals with a specified timeframe.

Section 9792.24.3(c)(5)(B) provides that patient education regarding postsurgical precautions, home exercises, and self-management of symptoms should be ongoing components of treatment starting with the first visit. It further provides that intervention should include a home exercise program to supplement therapy visits. This section allows patient education to be a fundamental component of the treatment.

Section 9792.24.3(c)(4)(C) provides that modalities (CPT codes 97010 through 97039) should only be performed in conjunction with other active treatments. It further provides that although these modalities are occasionally useful in the post surgical physical medicine period, their use should be minimized in favor of active physical rehabilitation and independent self-management. This section emphasizes the importance of active treatments during the post surgical physical medicine period.

Section 9792.24.3(d) provides postsurgical physical medicine treatment recommendations.

Section 9792.24.3(d)(1) provides that the postsurgical physical medicine treatment recommendations, which are listed under the section indicate the frequency and duration of postsurgical treatment for specific surgeries. The section further provides that the specified surgeries in the postsurgical physical medicine guidelines are not all inclusive. It reminds the

public that requests for postsurgical physical medicine treatment not included in the guidelines are to be considered pursuant to Section 9792.21(c). This section further provides that the physical medicine treatment recommendations (listed alphabetically) are adapted from Official Disability Guidelines (ODG) except where developed by the Division of Workers' Compensation and indicated as "[DWC]." The postsurgical physical medicine period is identified by an asterisk [*] as also developed by DWC. It informs the public that a copy of citations listed in the postsurgical treatment guidelines may be obtained from the Medical Unit, Division of Workers' Compensation, P.O. Box 71010, Oakland, CA 94612, or from the DWC web site at <http://www.dwc.ca.gov>.

17. Section 9792.25—Presumption of Correctness, Burden of Proof and Strength of Evidence.

Section 9792.25 setting forth the presumption of correctness, burden of proof and strength of evidence was contained in Section 9792.22. As part of the reorganization of the MTUS, the entire section is moved to Section 9792.25.

Section 9792.25(a) sets forth the presumption of correctness of the MTUS. The substance of this section was not changed. The section was amended for nonsubstantive purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.22(a) and is re-numbered section 9792.25(a).

Section 9792.25(b) sets forth the approach to be taken when injuries are not addressed by the MTUS. The substance of this section was not changed. The section was amended for nonsubstantive purposes to substitute the phrase "Medical Treatment Utilization Schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.22(b) and is re-numbered section 9792.25(b).

Section 9792.25(c)(1) The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(1) and is re-numbered section 9792.25(c)(1).

Section 9792.25(c)(1)(A) sets forth Table A-Criteria Used to Rate Randomized Controlled Trials. The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(1)(A) and is re-numbered section 9792.25(c)(1)(A).

Section 9792.25(c)(1)(B) sets forth Table B- Strength of Evidence Ratings. The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(1)(B) and is re-numbered section 9792.25(c)(1)(B).

Section 9792.25(c)(2) states that evidence shall be given the highest weight in the order of the strength of evidence. The substance of this section was not changed. The section was formerly contained in section 9792.22(c)(2) and is re-numbered section 9792.25(c)(2).

18. Section 9792.26—Medical Evidence Evaluation Advisory Committee

Section 9792.26 setting forth the medical evidence evaluation advisory committee was contained in Section 9792.23. As part of the reorganization of the MTUS, the entire section is moved to Section 9792.26.

Section 9792.26(a)(1) The substance of this section was not changed. The section is amended for nonsubstantive purposes to substitute the phrase "medical treatment utilization schedule" with the acronym "MTUS" in the first sentence. The section was formerly contained in section 9792.23(a)(1) and is re-numbered section 9792.26(a)(1).

Sections 9792.26(a)(1)(A) through 9792.26(b) The substance of these section were not changed. As part of the reorganization of the MTUS, these sections are now contained in section 9792.26 instead of section 9792.23. The sections were formerly contained in sections 9792.23(a)(1)(A), 9792.23(a)(2), 9792.23(a)(2)(A) through 9792.23(a)(2)(P), 9792.23(a)(3), and 9792.23(b). The sections are re-numbered sections 9792.26(a)(1)(A), 9792.26(a)(2), 9792.26(a)(2)(A) through 9792.26(a)(2)(P), 9792.26(a)(3), and 9792.26(b) respectively.

Section 9792.26(c) The substance of this section was not changed. The section is amended for nonsubstantive purposes to substitute the phrase “medical treatment utilization schedule” with the acronym “MTUS” in the first sentence. The section was formerly contained in section 9792.23(c) and is re-numbered section 9792.26(c).

Section 9792.26(c)(1) through Section 9792.26(c)(3) The substance of these sections were not changed. The sections were amended for nonsubstantive purposes respectively to correct the reference to section 9792.22. The correct reference is now section 9792.25. The sections were also corrected for clerical to substitute the higher case “S” with the lower case “s” in all the instances where the word “section” appeared. The sections were formerly contained in sections 9792.23(c)(1), 9792.23(c)(2), and 9792.23(c)(3). The sections are re-numbered sections 9792.26(c)(1), 9792.26(c)(2), and 9792.26(c)(3) respectively.

Section 9792.26(d) The substance of this section was not changed. The section was formerly contained in section 9792.23(d) and is re-numbered section 9792.26(d).

Section 9792.26(e) The substance of this section was not changed. The section is amended for nonsubstantive purposes to substitute the phrase “medical treatment utilization schedule” with the acronym “MTUS” in the sentence, and corrected for clerical error to substitute the letter “f” with the letter “e.” The section was formerly contained in section 9792.23(f) and is re-numbered section 9792.26(e).

DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTION

The Administrative Director has made the following initial determinations:

- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Adoption of this regulation will not: (1) create or eliminate jobs within the State of California; (2) create new businesses or eliminate existing businesses within the State of California; or (3) affect the expansion of businesses currently doing business in California.
- Effect on Housing Costs: None.
- Cost impacts on representative private person or business: The Administrative Director is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- The Administrative Director has determined that the proposed regulations will not have a significant adverse effect on business. All California employers are required pursuant to Labor Code section 4600 to provide medical treatment to injured workers that is reasonably required to cure or relieve the effects of the industrial injury. This treatment must currently be based upon the medical treatment utilization schedule (MTUS) adopted by formal rulemaking on June 15,

2007 pursuant to Labor Code section 5307.27. The MTUS is now comprised of the ACOEM Practice Guidelines, 2nd Edition, and the acupuncture medical treatment guidelines. The regulations propose to update the MTUS by adding the chronic pain medical treatment guidelines and the postsurgical treatment guidelines (the latter being mandated by Assembly Bill 1073 (Statute 2007, Chapter 621)). Both these guidelines were adapted from the Official Disability Guidelines (ODG), and will be made available to the public at no cost. The proposed regulations also replace the Elbow Complaints Chapter as contained in the ACOEM Practice Guidelines, 2nd Edition, with the ACOEM revised Elbow Disorders Chapter (Revised 2007). This guideline will also be made available to the public at no cost. There will be minimal costs due to training and updating of computer systems to insurers, self-insured self-administered employers, third party administrators, utilization review organizations and providers of workers' compensation medical care in order to use the updated sections of the MTUS.

- The regulations are expected to impact medical treatment decisions and may increase costs for some treatments for a subset of surgery, chronic pain, and elbow disorder cases. The regulations will assist the employer in determining proper medically necessary care for these cases which will reduce the instances where medically inappropriate care is provided. The increased specificity and clarity of the guidance on the treatment of these types of injuries and illnesses that the updated sections of the MTUS afford by defining standardized treatment protocols are expected to streamline the mandatory utilization review process (Lab. Code, §4610), reduce medically unnecessary care, reduce delays in treatment and denials of medically necessary treatment (thereby facilitating faster rates of recovery and return to work), and reduce medical disputes for these cases. These secondary effects are in turn expected to lead to cost offsets to insurers and employers in other areas, namely, utilization review, medical disputes, temporary disability indemnity payments, and permanent disability indemnity payments. Given the complex nature of the interaction of these components and the lack of a credible and reliable statistical basis for producing an estimate of the financial impact of the updated regulations, the overall statewide financial impact cannot be calculated or estimated. However, the claims that will be affected by the updated sections of the MTUS represent a small portion of workers' compensation claims overall. Elbow disorders are approximately 1.8 percent of all claims and claims that involve surgery are approximately 4.3 percent of all claims. The percentage of claims that are chronic pain cases is unknown, but is expected to be relatively uncommon. However, as these claims by definition consist of cases that persist beyond the time of expected tissue healing, their treatment is inherently more complicated and thus the costs associated with these cases will represent a disproportionately larger share of all medical treatment costs. Cost increases, if any, and cost offsets would be distributed among workers' compensation insurers (80% of costs and cost offsets) and self-insured employers (20% of costs and cost offsets). The financial impact on any individual business, if any, would therefore be minimal.
- It is important to note that employers are already providing medical treatment for elbow, chronic pain and postsurgical injuries, but are doing so without the guidance of presumptively correct treatment guidelines for chronic pain and postsurgical therapy. The costs, if any, are due to the legal requirement that the MTUS incorporate evidence-based, peer-reviewed, nationally recognized medical guidelines that address, at a minimum, the frequency, duration, intensity, and appropriateness of all treatment procedures and modalities commonly performed in workers' compensation cases (Lab. Code, § 5307.27). Additional costs would occur only if employers are currently providing less treatment, or less costly

treatment, than is recommended in the presumptively correct treatment guidelines.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district. The potential costs imposed on all public agency employers by these proposed regulations, although not a benefit level increase, are not a new State mandate because the regulations apply to all employers, both public and private, and not uniquely to local governments. The Administrative Director has determined that the proposed regulations will not impose any new mandated programs on any local agency or school district. The California Supreme Court has determined that an increase in workers' compensation benefit levels does not constitute a new State mandate for the purpose of local mandate claims because the increase does not impose unique requirements on local governments. See *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46. The potential costs imposed on all public agency employers and payors by these proposed regulations, although not a benefit level increase, are similarly not a new State mandate because the regulations apply to all employers and payors, both public and private, and not uniquely to local governments.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. (See "Local Mandate" section above.)
- Other nondiscretionary costs/savings imposed upon local agencies: None. (See "Local Mandate" section above.)

EFFECT ON SMALL BUSINESS

The Administrative Director has determined that the proposed regulations will result in small initial costs to small businesses due to training and updating of computer systems. There may also be some costs related to the purchase of other medical treatment guidelines that are evidence and scientifically based, nationally recognized and peer-reviewed if these business do not already own these guidelines as part of their ongoing business practices.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Administrative Director must determine that no reasonable alternative considered or that has otherwise been identified and brought to the Administrative Director's attention would be more effective in carrying out the purpose for which the actions are proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Administrative Director invites interested persons to present reasonable alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The text of the draft proposed regulations was made available for pre-regulatory public comment from August 20, 2007 to September 4, 2007, October 24, 2007 to November 3, 2007, and

November 20, 2007 to December 4, 2007 through the Division's Internet website (the "DWC Forum"), as required by Government Code section 11346.45.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, RULEMAKING FILE AND DOCUMENTS SUPPORTING THE RULEMAKING FILE/INTERNET ACCESS

An Initial Statement of Reasons (ISOR), including Appendix A—Chronic Pain Medical Treatment Guidelines supplementing the ISOR, Appendix B—Chronic Pain Medical Treatment Guidelines (DWC 2008) Evidence-Based Reviews, Appendix C—Postsurgical Treatment Guidelines (DWC 2008) Evidence-Based Reviews, and the text of the proposed regulations, including the Chronic Pain Medical Treatment Guidelines (DWC 2008) and the Elbow Disorders chapter, ACOEM Practice Guidelines, 2nd Edition (Revised 2007), in plain English, have been prepared and are available from the contact person named in this notice. The entire rulemaking file will be made available for inspection and copying at the address indicated below.

As of the date of this Notice, the rulemaking file consists of the Notice, the Initial Statement of Reasons, Appendix A, Appendix B, Appendix C, proposed text of the regulations, the Chronic Pain Medical Treatment Guidelines (DWC 2008) and the Elbow Disorders chapter, ACOEM Practice Guidelines, 2nd Edition (Revised 2007), pre-rulemaking comments and the Economic Impact Statement (Form STD 399). Also included are studies and documents relied upon in drafting the proposed regulations, including the Official Disability Guidelines, Treatment in Workers' Comp-Chapter on Pain (Chronic), Work Loss Data Institute, version dated October 31, 2007, and the Official Disability Guidelines, Treatment in Workers' Comp-Excerpt from the Chapter Procedures Summaries (ODG Physical Medicine Guidelines), Work Loss Data Institute, version dated November 12, 2007, and Appendix D—Chronic Pain Medical Treatment Guidelines (DWC 2008) Division of Workers' Compensation and Official Disability Guidelines' References, and Appendix E—Postsurgical Treatment Guidelines (DWC 2008) Official Disability Guidelines' References.

In addition, the Notice, Initial Statement of Reasons, Appendix A, Appendix B, Appendix C, Appendix D, and Appendix E, and the proposed text of the regulations, the Chronic Pain Medical Treatment Guidelines (DWC 2008), and the Elbow Disorders chapter, ACOEM Practice Guidelines, 2nd Edition (Revised 2007), being proposed, may be accessed and downloaded from the Division's website at www.dir.ca.gov. To access them, click on the "Proposed Regulations – Rulemaking" link and scroll down the list of rulemaking proceedings to find the Medical Treatment Utilization Schedule link.

Any interested person may inspect a copy or direct questions about the proposed regulations and any supplemental information contained in the rulemaking file. The rulemaking file will be available for inspection at the Department of Industrial Relations, Division of Workers' Compensation, 1515 Clay Street, 17th Floor, Oakland, California 94612, between 9:00 A.M. and 4:30 P.M., Monday through Friday. Copies of the proposed regulations, Initial Statement of Reasons and any information contained in the rulemaking file may be requested in writing to the contact person.

CONTACT PERSON FOR GENERAL QUESTIONS

Non-substantive inquiries concerning this action, such as requests to be added to the mailing list for rulemaking notices, requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, and any supplemental information contained in the rulemaking file may be requested in writing at the same address. The contact person is:

Maureen Gray

Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mgray@dir.ca.gov

The telephone number of the contact person is (510) 286-7100.

CONTACT PERSON FOR SUBSTANTIVE QUESTIONS

In the event the contact person above is unavailable, or for questions regarding the substance of the proposed regulations, inquiries should be directed to:

Minerva Krohn
Division of Workers' Compensation
P.O. Box 420603
San Francisco, CA 94142
E-mail: mkrohn@dir.ca.gov

The telephone number of this contact person is (510) 286-7100.

AVAILABILITY OF CHANGES FOLLOWING PUBLIC HEARING

If the Administrative Director makes changes to the proposed regulations as a result of the public hearing and public comment received, the modified text with changes clearly shown will be made available for public comment for at least 15 days prior to the date on which the regulations are adopted.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the Division's website at www.dir.ca.gov.

AUTOMATIC MAILING

A copy of this Notice, the Initial Statement of Reasons, and the text of the regulations, will automatically be sent to those interested persons on the Administrative Director's mailing list.

If adopted, the regulations with any final amendments will appear in title 8 of the California Code of Regulations, commencing with section 9792.20. The text of the final regulations also may be available through the website of the Office of Administrative Law at www.oal.ca.gov.